Office - Supreme Court, U. S.
FILED
MAR 7 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 820 - 822

IN THE MATTER
of
THE APPLICATION OF THE CITY OF NEW YORK, &c., RELATIVE TO ACQUIRING RIGHT AND TITLE TO, &c., CERTAIN PROPERTY, &c., NEAR BARREN ISLAND, &c., BROOKLYN, &c.,
(JAMAICA BAY NO. 1 PROCEEDING)

THE SAME: ORABOSS MEADOWS AND BUSHES MEADOWS
(JAMAICA BAY NO. 2 PROCEEDING)

THE SAME: MARINE 15TH STREET
(ADDITION TO MARINE PARK PROCEEDING)

GERRITSEN BASIN DEVELOPMENT CORPORATION,
Petitioner,

vs.

THE CITY OF NEW YORK,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF.

THOS. L. ZIMMERMAN, JR.,
Counsel for the Petitioner
GERRITSEN BASIN DEVELOPMENT CORPORATION,
551 Fifth Avenue,
New York City.

Post Printing Company, Inc., 80 Lafayette Street, New York, N. Y.

INDEX.

	PAGE
Summary and Short Statement of Matter Involved	2
Questions Presented	5
Proceedings in Trial Court	5
Decision of Appellate Division	7
Decision of Court of Appeals	9
Reasons Relied on for Allowance of Writ	9
Brief in Support of Petition	12 to 22
Arguments:	
1. The decision of the Arbitrators of 1696 and the decision in the Gerritsen Marine Park Proceedings (248 App. Div. 240) became part of the petitioner's grant or title and the decision of the New York Courts reversing the arbitration and its said prior decision constituted an impairment of petitioner's contract in violation of Article 1, Section 10 of the United States Constitution	17
2. The legal questions involved are of great importance	20
Conclusion	22

INDEX OF CASES.

PAGE

Douglas v. County of Pike (101 U. S. 677)..... 19

Gerritsen Marine Park (248 App. Div. 240) Affd. 275 N. Y. 456..... 4, 5, 12, 13, 18, 21

Louisiana v. Pilsbury (105 U. S. 278)..... 19, 20

Muhlker v. N. Y. & H. R. R. Co., 197 U. S. 544...10, 17, 18, 19, 20, 21

Ohio Life Ins. Company v. Debolt (16 How. 416).... 18

Sauer v. New York (206 U. S. 536)..... 18

Taylor v. Ypsilanti (105 U. S. 60)..... 18

Tidal Oil Co. v. Flannagan (263 U. S. 453)..... 20, 21

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No.

In the Matter
of
the Application of the City of New York, &c., relative to acquiring right and title to, &c., certain property, &c., near Barren Island, &c., Brooklyn, &c.,

(Jamaica Bay No. 1 Proceeding)

The Same: Oraboss Meadows and Bushes Meadows

(Jamaica Bay No. 2 Proceeding)

The Same: Marine 15th Street

(Addition to Marine Park Proceeding)

Gerritsen Basin Development Corporation,
Petitioner,

vs.

The City of New York,
Respondent.

To the Honorable, The Chief Justice and the Associated Justices of the Supreme Court of the United States of America:

The Petition of the Gerritsen Basin Development Corporation respectfully shows:

Summary and Short Statement of Matter Involved.

The three above entitled proceedings were instituted by The City of New York to condemn certain lands in the County of Kings and State of New York, and they were tried together at a Special Term of the Supreme Court of Kings County, New York, starting on December 6th, 1937 and concluding on June 2nd, 1938 with one Record and with the understanding that all evidence offered applied to all three proceedings.

The Jamaica Bay No. 1 Proceeding was instituted by an Order of the Supreme Court, Kings County, granting condemnation, dated March 25, 1924 and entered and filed in the office of the Clerk of the County of Kings on the 26th day of March, 1924, upon the Petition of The City of New York verified on the 17th day of March, 1924, in pursuance of a Resolution adopted by the Commissioners of the Sinking Fund on the 1st day of November, 1923, and a Resolution adopted by the Board of Estimate and Apportionment on the 4th day of January, 1924, initiating and authorizing the institution of the proceeding and directing the vesting of title in The City of New York on the day after the date of the entry of the Order granting condemnation.

Title vested in The City of New York on March 27, 1924.

The Jamaica Bay No. 2 Proceeding was instituted by an Order of the Supreme Court, Kings County, granting condemnation, dated May 29, 1923 and entered and filed in the office of the Clerk of the County of Kings on the 31st day of May, 1923, upon the Petition of The City of New York verified on the 25th day of May, 1923, in pursuance of a Resolution adopted by the Commissioners of the Sinking Fund on the 15th day of March, 1923, and a Resolution adopted by the Board of Estimate and Apportionment on the 20th day of April, 1923, initiating and authorizing the institution of the proceeding and directing

the vesting of title in The City of New York on the day after the date of the entry of the Order granting condemnation.

Title vested in The City of New York on June 1, 1923.

The Addition to Marine Park Proceeding was instituted by an Order of the Supreme Court, Kings County, granting condemnation, dated March 15, 1937 and entered and filed in the office of the Clerk of the County of Kings on the 15th day of March, 1937, upon the Petition of The City of New York verified on the 8th day of March, 1937, in pursuance of a Resolution adopted by the Board of Estimate and Apportionment on the 5th day of February, 1937, initiating and authorizing the institution of the proceeding and directing the vesting of title in The City of New York on the date of the entry of the Order granting condemnation.

Title vested in The City of New York on March 15, 1937.

The tentative Decree on awards in each of the three above proceedings were made and filed in the office of the Clerk of the County of Kings on August 18th, 1938 and objections thereto were filed by the Petitioner herein. The Final Decrees in each of the three above proceedings were made by the Supreme Court, Kings County, on September 15th, 1938 and filed in the office of the Clerk of the County of Kings on September 16th, 1938.

Petitioner, Gerritsen Basin Development Corporation, appealed to the Supreme Court of New York, Appellate Division, Second Department, from the Final Decrees which affirmed the decision of the Special Term by a divided court, each of the Justices thereof writing separate opinions.

Petitioner then appealed to the Court of Appeals, which affirmed the majority decision of the Appellate Division, without opinion, and the Final Decree of the Court of Appeals affirming the decision of the Supreme Court was entered in the Supreme Court, Kings County, New York, on the 25th day of November, 1940.

The question before the several Courts was the construction of a grant given by the Dutch to certain persons named Hudde and Gerritsen, Petitioner's predecessors in title in 1636. The same patent had been the subject of an Arbitration proceeding in 1696 between the Petitioner's predecessors in title and the predecessors of The City of New York.

In that proceeding the Arbitrators found that the "certain kill coming from the sea" referred to in the patent, was a stream known as the Strom Kill.

In a prior proceeding involving this patent, the Appellate Division of the Supreme Court found that the kill coming from the sea was the Strom Kill and that the lands involved in these proceedings were within the Hudde and Gerritsen patent but in that proceeding the Appellate Division held that the Petitioner had not proven a clear chain of title. (*Gerritsen Marine Park*, 248 App. Div. 240, affirmed 275 N. Y. 456). No question has been raised as to Appellant's chain of title in the present proceedings, at least as to an undivided 93/640th thereof.

This Court has jurisdiction of these proceedings because of the fact that the condemnation proceedings were conducted pursuant to a Statute of the State of New York, i. e. the New York City Charter and the Resolutions aforementioned of the Board of Estimate of the City of New York and the conceded reversal of the prior decisions of the New York Courts by the said Courts, constituted an impairment of contract within the meaning of Article 1, Section 10 of the Federal Constitution.

Objection was made in the only pleading in the case i. e. the objections to the tentative Decree in the condemnation proceedings that the reversal of the Courts' decisions were contrary to the Constitution of the United States and the decision of the Courts of the State of New York (Record pp. 91, 124 and 148).

Questions Presented.

The questions presented to this Court, concisely stated, are these:

Did the decision of the Arbitrators in 1696, construing the patent, become a part of the title and patent particularly so in view of the fact that the predecessors in title of both the Petitioner and Respondent, The City of New York, were the parties to the Arbitration proceeding; and if it did become part of the title, did the decisions of the Court in the instant proceedings changing the interpretation and construction of the said patent amount to an impairment of the contractual rights of the Petitioner, under Article 1, Section 10 of the United States Constitution where such decisions were made under legislative authority authorizing the condemnation of the lands in question.

The other question involved is whether or not there was an impairment of Petitioner's contractual rights by the reversal of the decisions involving the construction of the grant that was concededly made by the New York Courts in the Gerritsen Marine Park case (248 App. Div. 240). The Court in that case held that the Hudde and Gerritsen patent covered the lands involved in these proceedings and that the Kill referred to in said patent was the Strom Kill. In the present proceedings the Justices of the Appellate Division admitted in their several opinions that they were reversing the decision made in the prior case because of a different interpretation which was placed upon the wording of the patent at the Special Term for Trials, by an archavist.

The Proceedings in Trial Court.

The proceedings were instituted by Orders of the Supreme Court granting condemnation (Record, pp. 69, 118 and 136). The Petitioner filed its claims (Record,

pp. 72, 121 and 139). Hearings were had starting on December 6th, 1937 and concluding on June 2nd, 1938. In the proceeding before the Trial Court the Petitioner herein, in support of its claim, offered in evidence the patent from the Dutch Governor VanTwiller to Hudde and Gerritsen dated June 16th, 1636 (Record, p. 265) and also the Colonial patents confirming the Dutch patent (Record, pp. 299-300) and also offered in evidence the record of the Arbitration proceedings of 1696 (Record pp. 335 to 342). At fols. 1011 and 1012, the Arbitrators in that proceeding found that the words "stretching in length from a certain kill or creek running almost north and so runs into the woodland" is meant only the running of the Creek almost north and not that the land ran almost northward from said kill or creek into the woodland.

This was an important finding so far as Petitioner's contention is concerned because if this finding is binding the decision in the instant cases were directly contrary to the said finding.

The Arbitrators adopted the description contained in the confirmatory patent from Governor Nichols in 1667 (Record, p. 300). The finding of the Arbitrators above referred to was expressly repudiated by the Appellate Division of the Supreme Court and the Court of Appeals of New York; the Appellate Division stating "This finding cannot be reconciled with the theory which we are about to accept" (fols. 7555-56). Evidence was received, of a New York archavist, to the effect that all prior translations of the Hudde and Gerritsen patent were inaccurate, including the decision of the Arbitrators of 1696. He also testified that the decision of the Courts in the previous proceedings interpreting the patent were inaccurate and that instead of the river, the Strom Kill being the kill running from the sea, it was a branch of that stream that was the kill referred to in the patent.

The Trial Court accepted the interpretation of the Hudde and Gerritsen patent placed upon it by Van Lear, and found against the Gerritsen Basin Development Corporation. Objections were filed to the decision of the Trial Court by the Gerritsen Basin Development Corporation (Record, pp. 91, 124 and 148) and it was set forth specifically that the tentative Decree as to said Damage Parcel was contrary to the truth and in violation of the Constitutions of the United States and of the State of New York and the Statutes of the State of New York and the decisions of the Courts of the State of New York.

The only pleadings in a condemnation proceeding in the State of New York are the claim and the objections to the tentative Decree. After the filing of the objections, the Final Decree was signed by Mr. Justice Lockwood and entered in the office of the Kings County Clerk's office on September 16th, 1938 (Record, pp. 19, 32 and 40). An appeal was taken from such Decree to the Appellate Division of the Supreme Court, Second Department.

At the Trial Court, Petitioner introduced numerous Exhibits and Deeds and showed an undisputed title to 93/640 of the Hudde and Gerritsen patent and it contends it proved title to the remainder of the patent.

Decision of Appellate Division.

The Appellate Division, by a divided court, Mr. Justice Haggarty dissenting, reversed its former decision in the Gerritsen Basin Development Corporation (248 App. Div. 240) relying solely upon the parole testimony of the aforesaid City expert, Van Lear, and disregarding the decision of the Arbitrators in the 1696 Arbitration. In the Gerritsen Marine Park Proceeding, the Court had before it all the translations of the patent that it had in the instant case. In the majority opinion in the instant case, it was stated:

> "It cannot be said that this translation was a new one for it accords substantially with several of the other versions which were received in the former proceeding. What is new, however, is the expert testimony that this version alone is an accurate translation of the Dutch patent and that the translation accepted by the Court in the Gerritsen Creek-Marine Park case was erroneous and vitally misleading." (Record, fol. 7537.)

In the former proceeding, the Court having before it all the other translations of the patent, had held unanimously that the lands in question were covered by said patent and then proceeded to state as follows:

> "On all of the proof, a complete consideration of which would expand this opinion to an inordinate length, we are of the opinion that it has been established with a reasonable certainty that the strom kill was the kill described in the patent and that the lands that are claimed by the Appellant, Gerritsen Basin Development Corporation, were within its confines." (248 App. Div. 240 at 247.)

The Appellate Division in the proceedings at bar reversed its former decision by relying solely upon the parole testimony of the aforesaid City expert as to what was meant by the patent according to his interpretation as a linguist of the Dutch meaning of certain words in his particular translation of the Dutch patent. To hold with the said expert, the Court found it necessary to set aside its unanimous decision in the former proceeding; it had to set aside the English confirmatory patent and to set aside the unanimous findings of fact and conclusions of law of the former 1696 Arbitration on the bounds of the said Hudde and Gerritsen Basin patent.

In the Appellate Division, the Court's attention was called to the fact that its previous opinion made the matter res judicata. (Point one of petitioner's brief in Appellate Division, page 8.)

Decision of Court of Appeals.

An appeal was taken to the Court of Appeals from the decision of the Appellate Division, and after argument the Court of Appeals unanimously affirmed the majority decision of the Appellate Division, without opinion.

In the Court of Appeals (p. 57 of the main Brief) the Court's attention was called to the Arbitration of 1696 and and at page 61 the point was made that the Arbitration award was res judicata as between the parties and at page 126 of Appellant's Brief, the petition herein referred the Court of Appeals to the opinion of Mr. Justice Haggarty in the former proceedings and the dissenting opinion of Mr. Justice Haggarty in the instant proceedings.

Reasons Relied on for Allowance of Writ.

The question involved is of great importance to the Petitioner. The value of the land taken by the City, it is estimated, is worth $1,500,000, from which should be deducted about $750,000 in taxes and assessments that will be due the City and have accrued in amount largely since the institution of the condemnation proceedings.

The Petitioner contends:

(1) That the 1696 Arbitration proceedings became a part and parcel of the title and of the patent under which Petitioner claims title to the lands taken by the City and that the decision of the New York courts rejecting the findings and decision of the Arbitrators of the 1696 Arbitration, said decision having been rendered in a proceeding conducted under the City Charter of the City of New York and pursuant to a Resolution of the Board of Estimate of the City of New York, and constituted an impair-

ment of Petitioner's title and contract within the meaning of Article 1, Section 10 of the United States Constitution.

(2) That the decision of the New York Courts reversing the decision of the same Courts involving the same patent and covering the property involved in this proceeding made pursuant to the said Statute, i.e., the City Charter of the City of New York and the Resolutions of the Board of Estimate of the City of New York likewise impaired Petitioner's contract and title under Article 1, Section 10 of the United States Constitution.

Your Petitioner respectfully shows to the Court that this matter is of general interest and of importance to the Bar of the United States in that it is on all fours with the case of *Muhlker* v. *N. Y. & H. R. R. Co.*, 197 U. S. 544, which has been distinguished on several occasions by the United States Supreme Court. That case held that where the law affecting real estate has been established by the Courts, the decisions must be deemed part of the title and that in subsequent condemnation proceedings, the Court may not reverse its prior decision.

Attached hereto is the Brief of Petitioner in support of this Petition, to which reference is respectfully made for discussion of the law involved and of the authorities in support of the rights claimed on behalf of Petitioner.

The opinion of the Appellate Division of the Supreme Court, which was affirmed without opinion in the Court of Appeals, and the dissenting opinion of the Appellate Division, is printed at page 2506 of the Record. The opinion of the Trial Justice at Special Term of the Supreme Court, is printed at page 2394 of the Record. No other opinions were rendered in this case.

The Briefs of Petitioner and Respondent before the Court of Appeals and the Appellate Division of the Supreme Court, are submitted with this Petition.

Wherefore your Petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court directed to the Court of Appeals of the State of New York, to the end that the judgment of the Court of Appeals of New York State may be reviewed and reversed by this Honorable Court.

GERRITSEN BASIN DEVELOPMENT CORPORATION,
Petitioner,

By THOS. L. ZIMMERMAN, JR.,
Counsel for Petitioner.